

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ILLINOIS NATIONAL INSURANCE COMPANY, THE Case No.: 11-CV-00431 (KBF)
INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA, and NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,

Plaintiffs,

- against -

TUTOR PERINI CORPORATION,

X

TUTOR PERINI CORPORATION,

Third-Party Plaintiff,

- against -

CERTAIN UNDERWRITERS AT LLOYD'S LONDON

Third-Party Defendant.

X

**CERTAIN UNDERWRITERS AT LLOYD'S, LONDON'S¹
MOTION FOR LEAVE TO SUBMIT A SUR-REPLY**

The Third-Party Defendant, Underwriters, hereby move the Court for leave to submit a Sur-Reply in response to the Third-Party Plaintiff, Tutor Perini Corporation's ("Perini") Reply in Further Support of Its Motion for Reconsideration of this Court's November 15, 2012 Order entering judgment in favor of Underwriters on Perini's declaratory judgment claim.

Underwriters request leave for the limited purpose of clarifying a mischaracterization between waiver versus estoppel, Perini's purported "explanation" for its two month delay in providing notice to Underwriters, as well as other issues. Significantly, Underwriters Sur-Reply will be limited to no more

¹ Certain Underwriters at Lloyd's, London who subscribe to Policy No. 576/UF7274400 ("Underwriters").

than five (5) pages. Underwriters respectfully believe that the additional limited briefing will be of assistance to the Court in considering Perini's Motion for Reconsideration.

WHEREFORE, Underwriters respectfully request that this Court grant their request to submit a Sur-Reply, which will be limited to no more than five (5) pages, in response to Perini's Reply.

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By: Peri K. Agulnek
George C. Rockas, BBO #544009
George.Rockas@wilsonelser.com
Peri K. Agulnek, BBO #663865
Peri.Agulnek@wilsonelser.com
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
*Attorneys for Third Party Defendant, Certain
Underwriters at Lloyds Subscribing to Policy
No. 576/UF7274400*
260 Franklin Street, 14th Floor
Boston, MA 02110
(617) 422-5300

/s/ Guy J. Levasseur
Guy J. Levasseur
WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
3 Gannett Drive
White Plains, NY 10604-3407
914-872-7720

Dated: January 17, 2013

CERTIFICATE OF SERVICE

I, Peri K. Agulnek, hereby certify that Certain Underwriters at Lloyd's London's Motion For Leave to Submit A Sur-Reply was filed electronically using the Court's ECF on January 17, 2013 with a copy thereby delivered by email to all counsel.

/s/ Peri K. Agulnek